

1 **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**

2 In the Matter of the Money Transmitter License
3 of:

No. 10F-BD047-BNK

NOTICE OF HEARING

4 **ADIR MONEY TRANSFER CORP. DBA**
5 **LA CURACAO MONEY TRANSFER AND**
6 **MAURICIO FUX, PRESIDENT**
7 1605 W. Olympic Boulevard, Suite 800
Los Angeles, CA 90015

Petitioners.

8 PLEASE TAKE NOTICE that, pursuant to Arizona Revised Statutes ("A.R.S.") §§ 6-137,
9 6-138, and 41-1092.02, the above-captioned matter will be heard through the Office of
10 Administrative Hearings, an independent agency, and is scheduled for December 8, 2010, at 8:00
11 a.m., at the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix, Arizona,
12 (602) 542-9826 (the "Hearing").

13 The purpose of the Hearing is to determine if grounds exist for: (1) the issuance of an order
14 pursuant to A.R.S. § 6-137 directing Petitioners to cease and desist from the violative conduct and to
15 take the appropriate affirmative actions, within a reasonable period of time prescribed by the
16 Superintendent, to correct the conditions resulting from the unlawful acts, practices, and
17 transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the
18 suspension or revocation of Petitioners' license pursuant to A.R.S. § 6-1210; and (4) an order or any
19 other remedy necessary or proper for the enforcement of statutes and rules regulating money
20 transmitters pursuant to A.R.S. §§ 6-123 and 6-131.

21 Pursuant to A.R.S. § 6-138, the Superintendent of Financial Institutions for the State of
22 Arizona (the "Superintendent") delegates the authority vested in the Superintendent, whether implied
23 or expressed, to the Director of the Office of Administrative Hearings or the Director's designee to
24 preside over the Hearing as the Administrative Law Judge, to make written recommendations to the
25 Superintendent consisting of proposed Findings of Fact, Conclusions of Law, and Order. The Office
26 of Administrative Hearings has designated Lewis D. Kowal, at the address and phone number listed

1 above, as the Administrative Law Judge for these proceedings. Pursuant to Arizona Administrative
2 Code ("A.A.C.") Rule 2-19-104 and A.R.S. §§ 41-1092.01(H)(1) and 41-1092.08, the
3 Superintendent retains authority to enter orders granting a stay, orders on motions for rehearing, final
4 decisions pursuant to A.R.S. § 41-1092.08 or other order or process which the Administrative Law
5 Judge is specifically prohibited from entering.

6 Motions to continue this matter shall be made in writing to the Administrative Law Judge **not**
7 **less than fifteen (15) days** prior to the date set for the Hearing. A copy of any motion to continue
8 shall be mailed or hand-delivered to the opposing party on the same date of filing with the Office of
9 Administrative Hearings.

10 A.R.S. § 41-1092.07 entitles any person affected by this Hearing to appear in person and by
11 counsel, or to proceed without counsel during the giving of all evidence, to have a reasonable
12 opportunity to inspect all documentary evidence, to cross-examine witnesses, to present evidence
13 and witnesses in support of his/her interests, and to have subpoenas issued by the Administrative
14 Law Judge to compel attendance of witnesses and production of evidence. Pursuant to A.R.S.
15 § 41-1092.07(B), any person may appear on his or her own behalf or by counsel.

16 Pursuant to A.R.S. § 41-1092.07(E), a clear and accurate record of the proceedings will be
17 made by a court reporter. The transcription of the hearing proceedings by the court reporter shall be
18 the official record for purposes of the Administrative Law Judge's Recommended Decision and the
19 Superintendent's Final Decision and Order. Any party that requests a transcript of the proceedings
20 shall pay the cost of the transcript for the court reporter or other transcriber.

21 Questions concerning issues raised in this Notice of Hearing should be directed to Assistant
22 Attorney General Craig A. Raby, (602) 542-8889, 1275 West Washington, Phoenix, Arizona 85007.

23 NOTICE OF APPLICABLE RULES

24 On February 7, 1978, the Arizona Department of Financial Institutions (the "Department")
25 adopted A.A.C. R20-4-1201 through R20-4-1220, which were amended September 12, 2001, setting
26 forth the rules of practice and procedure applicable in contested cases and appealable agency actions

1 before the Superintendent. The hearing will be conducted pursuant to these rules and the rules
2 governing procedures before the Office of Administrative Hearings, A.A.C. R2-19-101 through
3 R2-19-122. A copy of these rules is enclosed.

4 Pursuant to A.A.C. R20-4-1209, Petitioners shall file a written answer **within twenty (20)**
5 **days** after issuance of this Notice of Hearing. The answer shall briefly state the Petitioners' position
6 or defense and shall specifically admit or deny each of the assertions contained in this Notice of
7 Hearing. If the answering Petitioners are without or are unable to reasonably obtain knowledge or
8 information sufficient to form a belief as to the truth of an assertion, Petitioners shall so state, which
9 shall have the effect of a denial. Any assertion not denied is deemed admitted. When Petitioners
10 intend to deny only a part or a qualification of an assertion, or to qualify an assertion, Petitioners
11 shall expressly admit so much of it as is true and shall deny the remainder. Any defense not raised
12 in the answer is deemed waived.

13 **If a timely answer is not filed, pursuant to A.A.C. R20-4-1209(D), Petitioners will be**
14 **deemed in default** and the Superintendent may deem the allegations in this Notice of Hearing as
15 true and admitted and the Superintendent may take whatever action is appropriate, including
16 suspension, revocation, denial of Petitioners' license or affirming an order to Cease and Desist and
17 imposition of a civil penalty or restitution to any injured party.

18 Petitioners' answer shall be mailed or delivered to the Arizona Department of Financial
19 Institutions, 2910 North 44th Street, Suite 310, Phoenix, Arizona 85018, with a copy mailed or
20 delivered to the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix,
21 Arizona 85007 and to Assistant Attorney General Craig A. Raby, Consumer Protection & Advocacy
22 Section, Attorney General's Office, 1275 West Washington, Phoenix, Arizona 85007.

23 **Persons with disabilities may request reasonable accommodations such as interpreters,**
24 **alternative format or assistance with physical accessibility.** Requests for accommodations must
25 be made as early as possible to allow time to arrange the accommodations. If accommodations are
26 required, call the Office of Administrative Hearings at (602) 542-9826.

1 **FACTS**

2 1. Petitioner Adir Money Transfer Corp. ("Adir") is a California corporation authorized to
3 transact business in Arizona as a money transmitter, license number MT 0909773, within the
4 meaning of A.R.S. §§ 6-1201, *et seq.* The nature of Adir's business is that of a money transmitter
5 within the meaning of A.R.S. § 6-1201(11).

6 2. Petitioner Mauricio Fux ("Mr. Fux") is the President of Adir and is authorized to transact
7 business in Arizona as a money transmitter within the meaning of A.R.S. §§ 6-1201, *et seq.*

8 3. An August 3, 2009 through August 5, 2009 examination of Adir, conducted by the
9 Department, revealed that Adir and Mr. Fux:

10 a. Failed to designate one of their locations in this state as their principal place of
11 business; specifically:

12 i. Petitioners maintain "one or more places of business in this state" and have
13 failed to designate one of the locations as their principal place of business.
14 Petitioners have one location at 7815 W. Thomas Road, Phoenix, which is
15 currently licensed as a branch office. This is currently the only business
16 location maintained by Petitioners in this State and should be designated as
17 the principal place of business and as such would not be a branch office;

18 b. Failed to file with the Superintendent the required quarterly reports within forty-five
19 days following the end of each quarter; specifically:

20 i. The quarterly report for the third quarter of 2008 was due on November 14,
21 2008, and was received by the Department on November 17, 2009;

22 ii. The quarterly report for the fourth quarter of 2008 was due on February 14,
23 2009, and was received by the Department on February 17, 2009; and

24 iii. The quarterly report for the first quarter of 2009 was due on May 15, 2009,
25 and was received by the Department on May 19, 2009;

26 ...

1 c. Failed to file all necessary reports with the Arizona Attorney General's Office
2 regarding business in this state pursuant to the Currency and Foreign Transactions
3 Reporting Act (31 U.S.C. §§ 5311-5326, including any special measures that are
4 established under 31 U.S.C. § 5318A, and 31 C.F.R. part 103 or 12 C.F.R. § 21.11);
5 specifically:

6 i. Petitioners failed to file required Suspicious Activity Reports (SARs) within
7 30 days, filed incomplete and inaccurate SARs, and filed SARs using the
8 incorrect form. Two reviewed SARs were filed late: Activity occurred
9 3/4/09, SAR was filed 8/4/09 and activity occurred 6/4/08 and was filed
10 6/15/08. The Company continued to file numerous SARs using "Treasury
11 Form TD F 90-22.56" even though the form was replaced by "FinCEN Form
12 109" on 3/31/07 which clearly indicated that "previous editions will not be
13 accepted after September 30, 2007." Some of the SARs reviewed by
14 examiner contained inaccurate information relating to the transaction
15 location, phone numbers, etc. The SAR narratives (Part VII) failed to contain
16 the required information. Clear instructions for completing the SAR
17 narrative are printed on the form and were not followed; and

18 ii. Petitioners have a review process for determining if a SAR filing is required
19 in reference to a transaction or group of transactions that have initially
20 triggered an indication that the transaction(s) may be suspicious. This
21 process is not well documented and is inconsistent. The examiner could not
22 determine from the written notations whether or not a SAR was actually filed
23 or in some instances, even reviewed. The Company was also not able to
24 determine the meaning of some of the notations. The length of time needed
25 to complete the review may be contributing to the late filing of SARs

26 d. Failed to keep adequate records of customers' identities for each transaction

1 involving the transmission of money in an amount of one thousand dollars
2 (\$1,000.00) or more as required by Title 6, Chapter 12; specifically:

- 3 i. Petitioners failed to keep adequate records of customers' identities as
4 required by this section as it relates to transactions of \$1,000 or more.
5 Petitioners failed to record the customers' occupation, type and number of the
6 customer's verified photographic identification, Social Security or Tax Payer
7 Identification Number, current residential address, or signature for all
8 transactions. The examiner reviewed 78 transactions in the amount of \$1,000
9 or more and found the following:
- 10 1. Twenty seven (27) transactions (35%) had missing ID type and
11 number;
 - 12 2. Thirty four (34) transactions (44%) had no Social Security or Tax
13 Payer Identification Number recorded. Thirty-three of these
14 transactions have Arizona addresses and 8 have occupations listed;
 - 15 3. One (1) transaction had a P.O. box listed as a residential address;
 - 16 4. Two (2) transactions had no customer's signature recorded;
 - 17 5. Twenty five (25) transactions (32%) had no occupations listed.
18 Numerous other transactions had invalid occupations listed such as
19 "mercado" and "meat market."
- 20 ii. Petitioners' current system pre-fills in some of the customer's information for
21 repeat customers. Petitioners should review their procedures to determine if
22 the pre-filled data is contributing to the failure to collect current, required,
23 information;
- 24 e. Failed to update their policies and procedures to promote compliance of obtaining
25 customers' signatures for sending transactions of one thousand dollars (\$1,000.00),
26 or more; specifically:

- i. Petitioners have not updated their policies and procedures to include customer identification requirements for transactions of \$1,000 or more. The policies and procedures provided for the examination makes no mention of the requirement to deliver the records created in relation to transactions of \$1,000 or more to the Arizona Attorney General's Office after three years or provide a retention letter pursuant to the Regulatory Bulletin, MT-05-01, issued by the Department on 9/15/05. The policies and procedures have also not been updated in reference to SAR's and contain the incorrect SAR form; and
- ii. Petitioners have no records of Arizona-specific training for its employees, including the identification of the provider and the material and instruction that were provided.

4. Based upon the above findings, the Department issued and served upon Petitioners a Notice of Assessment on April 21, 2010.

5. On April 22, 2010, Petitioners filed a Request for Hearing to appeal the Notice of Assessment.

LAW

1. Pursuant to A.R.S. §§ 6-1201, *et seq.*, the Superintendent has the authority and the duty to regulate all persons engaged in the money transmitter business and with the enforcement of statutes, rules, and regulations relating to money transmitters.

2. By the conduct, set forth above, Adir and Mr. Fux violated the following:

- a. A.R.S. § 6-1207(A) by failing to designate one of their locations in this state as their principal place of business;
- b. A.R.S. § 6-1211 by failing to file with the Superintendent the required quarterly reports within forty-five days following the end of each quarter;
- c. A.R.S. §§ 6-1241(B) and 6-1241(L) by failing to file all necessary reports with the

1 Arizona Attorney General's Office regarding business in this state pursuant to the
2 Currency and Foreign Transactions Reporting Act (31 U.S.C. §§ 5311-5326,
3 including any special measures that are established under 31 U.S.C. § 5318A, and
4 31 C.F.R. part 103 or 12 C.F.R. § 21.11);

5 d. A.R.S. § 6-1241(E) by failing to keep adequate records of customers' identities for
6 each transaction involving the transmission of money in an amount of one thousand
7 dollars (\$1,000.00) or more as required by Title 6, Chapter 12; and

8 e. A.R.S. § 6-1241(G) by failing to update their policies and procedures to promote
9 compliance of obtaining customers' signatures for sending transactions of one
10 thousand dollars (\$1,000.00), or more.

11 3. Pursuant to A.R.S. § 6-132, Petitioners' violations of the aforementioned statutes are
12 grounds for a civil penalty of not more than five thousand dollars (\$5,000.00) for each violation for
13 each day.

14 4. Pursuant to A.R.S. § 6-132, Adir and Mr. Fux shall be assessed a civil money penalty,
15 payable to the Department, in the amount of **ten thousand dollars (\$10,000.00)**. Adir and Mr. Fux
16 shall be jointly and severally liable for payment of the civil money penalty.

17 5. Pursuant to A.R.S. § 6-125(B)(4), Adir and Mr. Fux shall be assessed an examination
18 fee, including penalty, in the total amount of **three thousand four hundred forty five dollars**
19 **(\$3,445.00)**, pursuant to A.R.S. § 6-122(B)(3), plus any applicable late fees pursuant to A.R.S.
20 § 6-125(D).

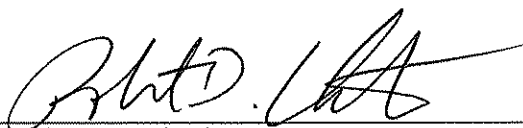
21 6. The violations, set forth above, constitute grounds for: (1) the issuance of an order
22 pursuant to A.R.S. § 6-137 directing Petitioners to cease and desist from the violative conduct and to
23 take the appropriate affirmative actions, within a reasonable period of time prescribed by the
24 Superintendent, to correct the conditions resulting from the unlawful acts, practices, and
25 transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the
26 suspension or revocation of Petitioners' license pursuant to A.R.S. § 6-1210; and (4) an order or any

1 other remedy necessary or proper for the enforcement of statutes and rules regulating money
2 transmitters pursuant to A.R.S. §§ 6-123 and 6-131.

3 WHEREFORE, if after a hearing, the Superintendent makes a finding of one or more of the
4 above-described violations, the Superintendent may affirm the April 21, 2010 Notice of Assessment
5 pursuant to A.R.S. § 6-137; impose a civil money penalty pursuant to A.R.S. § 6 132; suspend or
6 revoke Petitioners' license pursuant to A.R.S. § 6-1210; and issue an order or any other remedy
7 necessary or proper for the enforcement of statutes and rules regulating money transmitters pursuant
8 to A.R.S. §§ 6-123 and 6 131.

9 DATED this 2nd day of July, 2010.

10 Lauren W. Kingry
11 Superintendent of Financial Institutions

12 By 
13 Robert D. Charlton
14 Assistant Superintendent of Financial Institutions

15 ORIGINAL of the foregoing filed this 2nd
16 day of July, 2010, in the office of:

17 Lauren W. Kingry
18 Superintendent of Financial Institutions
19 Arizona Department of Financial Institutions
ATTN: Susan Longo
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

20 COPY of the foregoing mailed/delivered same date to:

21 Lewis D. Kowal, Administrative Law Judge
22 Office of the Administrative Hearings
1400 West Washington, Suite 101
Phoenix, AZ 85007

23 Craig A. Raby
24 Assistant Attorney General
25 Attorney General's Office
1275 West Washington
Phoenix, AZ 85007

1 Robert D. Charlton, Assistant Superintendent
Stephen Rosenthal, Senior Examiner
2 Arizona Department of Financial Institutions
2910 N. 44th Street, Suite 310
3 Phoenix, AZ 85018

4 AND COPY MAILED SAME DATE by
Certified Mail, Return Receipt Requested, to:

5 Mauricio Fux, President
6 Adir Money Transfer Corp. dba La Curacao Money Transfer
1605 W. Olympic Boulevard, Suite 800
7 Los Angeles, CA 90015
Petitioners

8 CT Corporation System, Statutory Agent For:
9 Adir Money Transfer Corp. dba La Curacao Money Transfer
2394 E. Camelback Road
10 Phoenix, AZ 85016

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